SHERMAN C. SMITH
MICHAEL MITCHELL, JR.

IBLA 81-531 Decided September 28, 1981

Appeal from the decision of the Alaska State Office, Bureau of Land Management, rejecting one mining claim recordation in whole and one in part and declaring the claims null and void to the extent of such rejections.

Affirmed.

1. Mining Claims: Determination of Validity--Mining Claims: Lands Subject to--Mining Claims: Withdrawn Land --Withdrawals and Reservations: Effect of

   A mining claim located on land previously withdrawn from appropriation under the mining laws is null and void ab initio.

2. Administrative Procedure: Hearings--Hearings--Mining Claims: Hearings

   A mining claimant is not entitled to a hearing before his claim can be declared invalid for having been located on land which is segregated from location.

APPEARANCES: Sherman C. Smith, pro se.

OPINION BY ADMINISTRATIVE JUDGE STUEBING

In November 1977, Sherman C. Smith and Michael Mitchell filed in the Alaska State Office of the Bureau of Land Management (BLM), location notices for the REC #1 and REC No. 2 placer mining claims, to be recorded in conformity with the applicable statute and regulations. 43 U.S.C. § 1744 (1976); 43 CFR 3833.

However, by its decision of March 19, 1981, BLM rejected for recording the location notice for the REC #1 claim, and held that the claim was null and void ab initio because it was located entirely on land which was segregated from mineral entry by withdrawal application AA 5934. The decision further rejected in part the location notice for

the REC No. 2 claim and held it to be null and void to the extent that it was also located on the segregated lands. The decision noted that the claims were located on November 9, 1974, and June 13, 1975, respectively, whereas on April 15, 1970, the lands had been segregated from, inter alia, entry and location under the mining laws by the filing of the withdrawal application by the Department of Agriculture for the Lower Russian Lake Recreation Area.

[1, 2] On appeal from this decision claimants (appellants) criticize the political practice, philosophy, and motivation which produce such results as this, and contend that the executive and judicial branches of Government are not properly administering the general law. On a more substantive level, appellants note that the withdrawal application was filed under Exec. Order No. 10355, 17 FR 4831 (May 26, 1952), by which the President delegated to the Secretary of the Interior his authority to withdraw or reserve lands pursuant to the Act of June 25, 1910, 36 Stat. 847, and pursuant to the authority otherwise invested in the President. 1/ They then assert:

> Ex. Or. 10355 says it is based on authority granted to the President by the Act of June 25, 1910, ch. 421 and so we got a copy of that.
>
> We were genuinely pleased, and excited, when we found that the Congress, in it's [sic] wisdom of 1910, stated -- BY LAW -- in sec. 2. "That all lands withdrawn under the provisions of this Act shall at all times (emphasis added) be open to exploration, discovery, occupation, and purchase, under the mining laws of the United States so far as the

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1/ In addition to the authority to withdraw lands which was conferred on the President by the Act of June 25, 1910, supra (known as the ("Pickett Act"), it has been held repeatedly that the President enjoyed nonstatutory authority, inherent in his office, to withdraw lands from all forms of appropriation under the public land laws, including the mining law, without the limitation imposed by the Pickett Act that the land remain open to metalliferous location. See, e.g., Harry H. Wilson, 35 IBLA 349 (1978). This inherent authority was also delegated to the Secretary of the Interior by Exec. Order No. 10355, 17 FR 4831 (May 26, 1952). The Pickett Act was repealed by section 704 of the Federal Land Policy Act of 1976 (FLPMA), together with the implied authority of the President to make other forms of withdrawals. However, section 701(c) of FLPMA provided that all withdrawals, classifications, and designations then in effect should remain in full force and effect until otherwise modified. We note that the file in this case shows that the withdrawal for the Lower Russian Lake Recreation Area is now being processed under the withdrawal authority enacted by FLPMA.

> same apply to minerals other than coal, oil, gas and phosphates." We filed for the travertine (CaCO[3]).

Appellants are correct that the original legislation, when enacted in 1910, contained the quoted provision. However, by the Act of August 24, 1912, the 1910 Act was amended by substituting "metalliferous minerals" for "minerals other than coal, oil, gas, and phosphates," so that after the date of the amendment, the Act read, "All lands withdrawn under the provisions of this section * * * shall at all times be open to exploration, discovery, occupation, and purchase under the mining laws of the United States, so far as the same apply to metalliferous minerals." (Emphasis added.) 43 U.S.C. § 142 (1970). Travertine, a form of limestone, is not a metalliferous mineral. 2/ Thus, assuming that the exception to the Act, as amended, applied in this instance, these claims would not qualify.

Appellants are under the impression that a hearing will be conducted incident to the disposition of their appeal. No hearing is involved in cases such as this. As we stated in Cajen Minerals, Inc., 31 IBLA 188, 189 (1977):

> The principles of law governing the attempted location of a mining claim on land closed to mineral entry are quite simply stated and have been frequently repeated. A mining claim located on land which is not open to such location confers no rights on the locator and is properly declared null and void ab initio, and where the records of the Bureau of Land Management show that land was not open to mining location at the time such a location was attempted, a hearing is not required to establish the invalidity of the claim. The Dredge Corporation, 64 I.D. 368 (1957), 65 I.D. 336 (1958), aff'd sub nom. in Dredge Corporation v. Penny, 362 F.2d 889 (9th Cir. 1966); Robert K. Foster, A-29857 (June 15, 1964), aff'd sub nom. Foster v. Jensen, 296 F. Supp. 1348 (D.C.C.D. Calif. 1966); David W. Harper, 74 I.D. 141 (1967); Robert L. Beery, 25 IBLA 287, 83 I.D. 249 (1976); John Boyd Parsons, 22 IBLA 328 (1975).

As noted above, the subject claims were located some 5 years after the land was segregated. Therefore, to the extent that they were located on segregated land, they were properly declared null and void ab initio, and no hearing is necessary to reach this determination.

2/ The subject deposit is characterized in the record as an easily crumbled limestone which is unfit for use as building stone, but which may have value for agricultural use as a soil additive. This raises the question of whether location of this material is barred by the Act of July 23, 1955, 30 U.S.C. § 611 (1976), as a common variety of stone.

Accordingly, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

Edward W. Stuebing
Administrative Judge

We concur:

Douglas E. Henriques
Administrative Judge

Anne Poindexter Lewis
Administrative Judge